

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

D. Flint Drake,
Appellant,

v.

Dubuque County Board of Review,
Appellee.

ORDER

Docket No. 13-31-0418
Parcel No. 1512352008

On October 28, 2013, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, D. Flint Drake, was self-represented. Assistant County Attorney Joshua Vander Ploeg represented the Board of Review. The Appeal Board now, having examined the entire record and being fully advised, finds:

Findings of Fact

D. Flint Drake is the owner of property located at 9964 Four Sisters Court, Dubuque, Iowa. The real estate was classified residential on the January 1, 2013, assessment. It was valued at \$474,600, representing \$37,260 in land value and \$437,340 in improvement value. Drake protested the assessment to the Dubuque County Board of Review on the grounds the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1) and the property was assessed for more than authorized by law under section 441.37(1)(a)(2). Drake asserts the correct value is \$410,000. The Board of Review granted his request, in part, and lowered the assessment to \$428,560.

Drake then appealed to this Board reasserting his claims.

According to the property record card, Drake's property is a two-story, brick home built in 2004. It has 4344 square feet of above-grade living area and a full, unfinished basement. The property also has a 272 square-foot open porch, an 861 square-foot concrete patio, and a three-car, attached garage. The subject property is listed as being of high-quality grade (2+10) and is in normal condition. The subject site is 0.488 acres.

Drake purchased the subject property on October 31, 2012, for \$410,000. The Board of Review reports the subject property was initially listed for \$537,000 in 2009 and was subsequently relisted for \$479,000 in 2011. Drake states the only other offer on the property during this listing period was for \$407,000. Further, he asserts that "no other home in the neighborhood or area generally is assessed or sold for even \$400,000." Ultimately, he argues that fair market value is what a willing buyer will pay a willing seller and that the fair market value of this property is \$410,000.

Drake provided nine properties and their assessments that he considered for equity comparison. All are located within one block of the subject property. The assessments range from \$219,140 to \$361,740. Eight of the properties are one-story homes compared to the subject's two-story design. We do not find one-story homes to be sufficiently similar to the subject property. One property, 9971 Four Sisters Court, is a two-story home like the subject; however, it has a frame exterior compared to the subject's brick exterior. Further, this property has only 2546 square feet of living area compared to the subject's above-grade living area of 4344 square feet. For these reasons, we do not find these properties to be sufficiently similar to the subject property for an equity analysis. Moreover, only one of these properties (10061 Timothy Street) had a normal sales transaction in 2012. Drake did not provide a market value of the remaining properties, which is required to conduct a sales-ratio analysis.

Although Drake provided nine properties for comparison, we do not find the properties to be sufficiently similar to his property; and, he has failed to establish the market value of the properties to

determine a sales-ratio analysis to support his claim of inequity. Lastly, he does not assert the Assessor applied assessment methods in a non-uniform manner on the subject property.

The record also includes an appraisal of the subject property. The appraisal was completed by John K. Mills of Rally Appraisal, LLC, Dubuque, Iowa. Mills developed only the sales comparison approach and included three sales from October 2011 to April 2012. Mills states he had to look past six months to find sales and use a one-story home comparable because of “scarcity of data due to 2 story design and very large dwelling size.” Two of the sales are two-story homes, and the third sale is a one-story home. After adjusting for differences, Mills concludes an opinion of \$410,000, with an effective date of October 11, 2012.

The Board of Review is critical of Mills’ appraisal and points to errors in the appraisal. For example, Mills notes Sale #1 (8132 Raphael Drive) is located roughly three-and-a-half miles from the subject property. The Board of Review, however, asserts this property is closer to four-and-a-half miles from the subject “as the crow flies” and closer to seven miles by roadway according to the Board of Review. It is also critical that this sale is 500 square feet smaller than the subject property, yet Mills made no size adjustments. The Appeal Board is less concerned with the proximity of this sale to the subject, but we do question why Mills did not consider sales with more similar living area as the subject.

The Board of Review agrees that Sale #2 (14267 Green Hills Drive) is probably the best comparable of those provided in the appraisal report, however, it is 1636 square feet smaller than the subject property. The Board of Review is critical of the adjustment, which was made at \$20 per-square-foot. It believes this adjustment minimalizes the difference in size. Further, it asserts Sale #2, which is sixteen years older than the subject, is not adequately adjusted to reflect this difference. Lastly, this sale has only a brick front compared to the subject, which features a full brick exterior. Mills did not adjust for this element or comment about the difference.

The Board of Review is also critical of Sale #3 (14203 Barrington Drive), asserting it should not have been included for analysis because it is a one-story home compared to the subject's two-story design.

To support its belief that Mills did not consider the best sales available, the Board of Review provides five additional sales it believes are more comparable. All are similar quality, two-story homes of similar age and size to the subject property. Moreover, it notes that these sales are more recent than the sales used in Mills' appraisal and three of them feature full brick exteriors similar to the subject. The five sales provided by the Board are as follows:

Address	Sale Price	Sale Date	Year Built	GLA	Basement Finish	SP/SF
Subject	\$410,000	November-12	2004	4344	None	\$94.38
1054 Barbaralee Dr	\$420,000	February-13	1999	3687	1100	\$113.91
900 Logan Street	\$379,000	July-12	1998	3478	400	\$108.97
1041 Shady Oaks Dr	\$610,000	February-12	2002	4210	1000	\$144.89
1047 Shady Oaks Dr	\$670,000	August-12	2006	4771	2600	\$140.43
1136 Hunters Ridge	\$611,500	November-12	2006	4055	1600	\$150.80

Although the Board of Review did not adjust these sales for differences, we agree they appear to be more similar to the subject property in style and size than those Mills considered. Although Mills' stated there was scarce sales data of very large, two-story dwellings, this evidence shows otherwise. While we note that the sales of 1054 Barbaralee Drive and 1136 Hunters Ridge occurred after the effective date of Mills' appraisal, the Appeal Board questions why Mills did not consider the remaining sales given their apparent similarity to the subject.

The Appeal Board is persuaded that Mills failed to consider sales of more comparable properties and instead relied on sales of properties with important differences in size and style. For these reasons, we find Mills' ultimately undervalues the subject property.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

Drake provided nine properties he considered for equity comparison. However, the comparable properties were not similar to the subject property and we give them no consideration. Moreover, only one property had a recent normal sale and Drake did not provide evidence of the remaining properties’ market values to compare to their assessments for the development of a sale-ratio analysis. Additionally, Drake did not assert the assessor applied different methods of assessments to similar properties. Ultimately, Drake did not prove by a preponderance of the evidence that his property is inequitably assessed under either the *Eagle Food* or *Maxwell* tests.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Drake asserts he purchased the property for \$410,000, and that the sales price is the best indicator of the fair market value. We recognize that Iowa Code section 441.21(1)(b) states that “market value is defined as the fair and reasonable exchange . . . between a willing buyer and a willing seller.” Section 441.21(1)(b) goes on to state, however, that “sales prices of the property or

comparable property in normal transactions reflecting market value . . . shall be taken into consideration in arriving at its market value.” In interpreting this provision, the Iowa Supreme Court has stated that while the sales price of a property may be evidence of its market value, the sales price *alone* is not determinative of the market value. *Riley v. Iowa City Board of Review*, 549 N.W.2d 289 (Iowa 1996). Rather, the subject property’s sales price in a normal transaction is a matter to be considered in arriving at market value but does not *conclusively* establish the subject’s market value. *Id.* at 290.

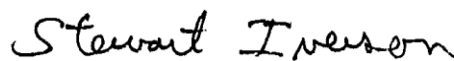
Here, the Board of Review provided five 2012 and 2013 sales of large, two-story homes in Dubuque. Like the subject, three of these properties have full-brick exteriors and exceed 4000 square feet of above grade living area. These properties have sale prices ranging from \$610,000 to \$670,000, or \$140.43 per-square-foot to \$150.80 per-square-foot. From this evidence it appears Drake’s \$410,000 purchase price (\$98.36 per-square-foot) for the subject property is significantly less than the sales prices of similar and comparable homes in the area.

The record also includes an appraisal by John K. Mills, who concludes a value opinion of \$410,000 for the subject. Compared to the subject’s two-story, full brick design with 4344 square feet of above-grade living area, Mills relied on sales of smaller properties and a one-story home. The Board of Review was critical of the appraisal, asserting the best and most similar properties were not considered for analysis and that adjustments did not adequately reflect market conditions. The Board of Review provided five more recent sales of properties of similar style, size, and age. Although the Board did not adjust these properties for differences or conclude an opinion of value based on these sales, we agree with its criticism that Mills did not consider the best sales available. For this reason, we do not believe Mills’ appraisal is an accurate reflection of the property’s fair market value as of January 1, 2013.

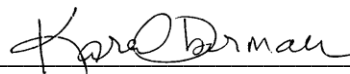
After consideration of the Board of Review sales data, it appears Mills' undervalues the property and, likewise, Drake may have purchased the property for less than its fair market value. Therefore, we find that Drake has failed to establish the subject's fair market value as of January 1, 2013, and ultimately has not provided sufficient evidence to prove the subject property is assessed for more than authorized by law.

THE APPEAL BOARD ORDERS the assessment of the D. Flint Drake's property located at 9964 Four Sisters Court, Dubuque, Iowa, is affirmed with a total value of \$428,560 as of January 1, 2013.

Dated this 22nd day of November, 2013.



Stewart Iverson, Presiding Officer



Karen Oberman, Board Member

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